ALEXANDER B. CVITAN (CSB 81746) and CARLOS R. PEREZ (CSB 181647), Members of REICH, ADELL & CVITAN A Professional Law Corporation 3550 Wilshire Blvd., Suite 2000 Los Angeles, California 90010-2421 Telephone: (800) 386-3860 Facsimile: (213) 386-5583 5 Attorneys for Petitioner Southern District Council of Laborers and its 6 affiliated Local, Laborers' International Union of North America, 7 Local 1184 8 UNITED STATES OF AMERICA 9 NATIONAL LABOR RELATIONS BOARD OF CALIFORNIA 10 11 12 CASE NO. 21-RC-21306 ROAD WORKS INC. 13 PETITIONER'S ANSWERING BRIEF IN RESPONSE TO EXCEPTIONS OF EMPLOYER TO 14 Employer, and 15 HEARING OFFICER'S REPORT SOUTHERN CALIFORNIA DISTRICT COUNCIL OF AND RECOMMENDATIONS LABORERS AND ITS AFFILIATED 17 LOCAL, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1184 18 19 Petitioner. 20 21 22 The Employer has filed various exceptions to the Hearing Officer's Report 23 and Recommendations dated December 16, 2011. Petitioner files this answering 24 brief in response to those exceptions. 25 /// 26 27 28

The Hearing Officer was correct in excluding Dan Blocker from the unit and determining that his vote should not be counted. Dan Blocker testified that he is the nephew of all three of the Company's owners. He left the Company in about June 2011. His close relationship with the Company's owners is sufficient grounds for his exclusion. Board authority has allowed for the exclusion of closely related relatives when they are shown to enjoy special status. *See Luce and Son, Inc.*, 313 NLRB 1355 (1994) (exclusion upheld in view of special privileges or benefits).

Notwithstanding this fact, the Hearing Officer attempted to be fair in his evaluations of the challenged ballots involving Dan Blocker and Javier Castro. Their circumstances are similar. Accordingly, if Mr. Castro was found to have resigned his employment, it was appropriate for the Hearing Officer to reach the same conclusion as to Mr. Blocker.

Employee Jesus Cervantez testified that Mr. Blocker informed him that he was seeking another job, and that he would be having an interview shortly. Soon after the interview, Blocker left. There was no dispute that Blocker went to work at another location in the food service industry—a job completely different from his duties at Road Works. There was no written evidence that the Company could adduce at the hearing to establish that there was any formal understanding between Road Works and Mr. Blocker that he was taking a temporary leave of absence or that he could return when other jobs became available. Furthermore, and perhaps most telling, Mr. Blocker did not apply for unemployment after he stopped working for the Company (indicative of his decision to quit). Also, when other work arose at the Company, Mr. Blocker did not return to work but instead, continued to work in his new job. These are indications that Mr. Blocker was no longer connected to the Company. In view of this evidence, it was appropriate for the Hearing Officer to exclude his vote.

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The Company's only incentive for including Mr. Blocker is its assumption that his close relationship with the owners of the Company will result in an extra vote for the Company, thus resulting in a tied election. Blocker's relationship with the owners, and his incentive to give testimony to suit the Company's interest thereby enhancing his changes of re-employment by his uncles, should be considered in determining whether he was a credible witness.

For the reasons set forth therein and for the reasons discussed so thoroughly in pages 6-10 of the Hearing's Officers Report and Recommendations, Mr. Blocker's vote should be excluded.

Dated: January 5, 2012

REICH, ADELL & CVITAN A Professional Law Corporation

CARLOS R. PEREZ Attorney for Petitioner

1 PROOF OF SERVICE 2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 3 years and not a party to the within action; my business address is 3550 Wilshire Blvd., Suite 2000, Los Angeles, California 90010. 4 5 On January 6, 2012, I served the foregoing document described as **PETITIONER'S** ANSWERING BRIEF IN RESPONSE TO EXCEPTIONS OF EMPLOYER TO HEARING 6 OFFICER'S REPORT AND RECOMMENDATIONS on the interested parties(s) by placing. 7 a true copy thereof the original 8 enclosed in a sealed envelope and addressed as set forth: 9 Via NLRB site E-filing NLRB - Executive Secretary 10 Via email bruce.hill@nlrb.gov D. Bruce Hill, Acting Regional Director 11 National Labor Relations Board, Region 21 12 888 South Figueroa Street, Ninth Floor Los Angeles, California 90017-5449 13 14 tlenz@aalrr.com Thomas Lenz, Esq. Via email Atkinson, Andelson, Loya, Ruud & Romo 15 12800 Center Court Dr Ste 300 16 Cerritos, CA 90703 17 (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. 18 postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party 19 served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. 20 21 (By Email) I sent such document by use of electronic mail to the above email address(es) on the date indicated above. (CCP § 1013(a)). Such document was scanned and emailed,; 22 without errorm, to such recipient whose e-address is indicated above pursuant to CCP § 1013(a); service via § 102.114(i) of Board's Rules & Regs. 23 I declare under penalty of perjury under the laws of the State of California that the above 24 is true and correct. 25 Executed on January 6, 2012, at Los Angeles, California. 26

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